

**CITY OF LINCOLN, NEBRASKA  
REDEVELOPMENT AGREEMENT  
(Collegiate Housing Redevelopment Subproject)**

THIS COLLEGIATE HOUSING REDEVELOPMENT AGREEMENT ("Redevelopment Agreement" or "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, ("Date of this Agreement") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (hereinafter referred to as "City") and NE-UNL Holdings LLC, a Delaware limited liability company, authorized to transact business in the State of Nebraska, and its successors and assigns (hereinafter referred to as "Redeveloper").

**RECITALS**

A. Redevelopment Project Area. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan, as amended ("Redevelopment Plan"), pursuant to the Community Development Law of the State of Nebraska, Chapter 18, Article 21, Sections 18-2101-18-2144, as supplemented by and including Sections 18-2147 to 18-2153, Reissue Revised Statutes of Nebraska, 1943, as amended and as the same may be amended from time to time ("Community Redevelopment Law"). The Redevelopment Plan provides for the South Haymarket Redevelopment Project in an area generally located from South 7th Street to South 9th Street, N Street to J Street and approximately 3.5 acres of land lying southwest of the intersection of South 7th Street and N Street and including all adjacent rights-of-way ("Redevelopment Project Area"). Included within the South Haymarket Redevelopment Project is a redevelopment subproject known as the Collegiate Housing Subproject ("Redevelopment Subproject"). The Redevelopment Subproject

is expected to include the private redevelopment of the Project Site (defined below) into a seven-story student oriented apartment complex and provide an increase in the availability of on- and off-street parking in an area described as follows:

- (1) Lots 13-15 and the north 1/2 of the adjacent vacated east-west alley, Block 70, Original Plat, City of Lincoln, Lancaster County, Nebraska (“Project Site”);
- (2) The area between 7th Street and Arena Drive from the south right-of-way line of N Street south to approximately the north right-of-way line of “M” Street extended west;
- (3) 7th Street from the north right-of-way line of “N” Street to the south right-of-way line of “J” Street, “J” Street, “K” Street, “L” Street, “M” Street, and “N” Street from the west right-of-way of 7th Street to the east right-of-way line of 9<sup>th</sup> Street, including adjacent alleys and City owned property.

(collectively “Subproject Area”). The Subproject Area is shown on Exhibit “A”. A copy of the Redevelopment Plan, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (the “City Clerk”).

B. Purchase Agreement. David A. White and Lawrence B. White (“Property Owners”) are the current owners of the Project Site. The Property Owners and Redeveloper have entered into an agreement, dated September 12, 2014, as may be amended, (“Purchase Agreement”) which permits the Redeveloper to acquire the Project Site from the Property Owners pursuant to the terms of the Purchase Agreement.

C. Private Improvements. Upon acquiring title and taking possession of the Project Site from the Property Owners, the Redeveloper intends to undertake the following work: (1) demolish the existing structure and construct private improvements on the Project Site, (2)

remove the existing hard surface of the abutting north-south alley and repave the alley as described on an Executive Order issued by the Mayor after the City, at its expense, encases the public sewer line in said alley, (3) construct a bus zone abutting the Project Site as described on an Executive Order issued by the Mayor, and (4) construct a new, approximately 265,000 square foot, seven-story building on the Project Site that will be used as student-oriented housing consisting of an approximately 172-unit/624-bed apartment complex and potential first floor commercial uses (collectively “Collegiate Housing”).

D.     Parking. The zoning regulations for the B-4 Lincoln Center Business District do not require on-site parking for the Collegiate Housing use of the Project Site. In order to help meet parking demands of the tenants residing in the Collegiate Housing, and to reduce the impact of the Collegiate Housing on other development in the South Haymarket Area, Redeveloper intends to lease up to 200 parking stalls from the City at nearby City or West Haymarket Joint Public Agency (“JPA”) parking garages or surface lots. The Redeveloper further intends, upon completion of the Private Improvements, to (1) acquire and construct a minimum 300 stall parking lot on a site generally located at 1st and O Streets (“West O Street Parking Lot”) and (2) initially provide shuttle service for its tenants between the Project Site and the University of Nebraska-Lincoln downtown campus and between the Project Site and West O Street Parking Lot upon completion of the Private Improvements (“Shuttle”). Such West O Street Parking Lot and Shuttle are not requirements under the zoning regulations for the B-4 Lincoln Center Business District, nor under this Agreement and its Exhibits.

E.     Public Improvements. The City intends to use available TIF Tax Revenues (defined below) to support the short-term and long-term parking needs of the Collegiate Housing and to reduce the impact of the Collegiate Housing on other development in the South

Haymarket Area by designing and constructing any or all of the following public improvements (collectively “City Public Improvements”) within the Subproject Area: (1) provide more on-street parking by reconfiguring the public rights-of-way to switch from parallel to angle parking; (2) provide additional off-street parking by constructing surface parking lots; and (3) install public streetscape improvements, including sidewalks, ADA ramps, hardscape, landscape, pedestrian and street lighting, and signage.

F. Terms and Conditions. This Redevelopment Agreement implements the Collegiate Housing Redevelopment Subproject and sets forth the terms and conditions for the Subproject.

G. Prevent Recurrence of Substandard and Blight. *Neb. Rev. Stat.* §18-2107 (Reissue 2007) authorizes the City to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the City may deem necessary to prevent the recurrence of substandard and blighted areas.

H. Use Restrictions. The City is willing to support the above described redevelopment of the Subproject Area provided Redeveloper is willing to restrict the use of the Project Site to certain approved uses.

I. Tax Increment Financing Provision. Pursuant to *Neb. Rev. Stat.* §18-2147, et seq., the Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the Redevelopment Project for the benefit of any public body shall be divided, for a period not to exceed fifteen (15) years after the Effective Date as identified herein as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment

Project Area valuation as of January 1 of the year prior to the year that the ad valorem taxes are to be divided shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

- That portion of the ad valorem tax on real property as provided in the redevelopment contract or bond resolution in the Redevelopment Project Area in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle and the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority (“TIF Indebtedness”) for financing or refinancing in whole or in part, of the Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in the Redevelopment Project Area shall be paid into the funds of the respective public bodies.

Said provision is hereinafter referred to as the “Ad Valorem Tax Provision” or the “Tax Increment Provision.”

J. TIF Tax Revenues. The Redeveloper understands and acknowledges that the City intends to incur TIF Indebtedness to pay for or reimburse the City for the City Public Improvements. Said indebtedness is to be repaid with the tax increment revenues (“TIF Tax Revenues”) generated under the Ad Valorem Tax Provision.

K. Best Interest of the City. The parties mutually agree that the redevelopment of the Subproject Area is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties, and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## ARTICLE I.

### EVIDENCE OF REDEVELOPER'S ABILITY

#### **Section 101. Evidence of Redeveloper's Ability to Construct the Public Improvements.**

A. Statement of Approved Financing. Within thirty (30) days after Closing on the loan financing of the Private Improvements, but not later than July 1, 2017, Redeveloper shall state the amount and source of debt financing which has been obtained or irrevocably committed to Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the Finance Director of the City. Evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan.

B. Timely Submittal of Financial Evidence. Timely submittal of the financial information required in subsection A. above in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Redevelopment Agreement.

C. Evidence of Project Site Acquisition and Construction Contract. Within thirty (30) days after acquisition of the Project Site, but not later than July 1, 2017, Redeveloper shall provide satisfactory documentation to the City that Redeveloper has acquired the Project Site and entered into a construction contract and is ready, willing, and able to timely commence construction of the Private Improvements as provided in Section 202 B below.

D. Timely Submittal of Site Acquisition and Construction Contract Documentation. Timely submittal of the documentation required in Subsection C above in a form satisfactory to the City Attorney shall be a condition precedent to the requirement of the City to proceed with its obligations under this Agreement.

## ARTICLE II

### CONSTRUCTION OF PRIVATE IMPROVEMENTS

#### Section 201. Private Improvements.

A. Building Permit. Redeveloper shall apply for and receive necessary building permits for construction of the Private Improvements.

B. City Public Improvements. Design Development Plans and Construction Documents will be prepared by the City, at its expense, subject to reimbursement with available TIF Tax Revenues as described in this Redevelopment Agreement, for the City Public Improvements to be constructed by the City in the Subproject Area.

#### Section 202. Construction of Private Improvements.

A. Construction. Redeveloper at its own cost and expense shall, through a minimum investment of Nineteen Million Five Hundred Thousand and No/100 Dollars (\$19,500,000.00), construct the Private Improvements in conformity with the approved building permits and this Redevelopment Agreement.

1. Permits and Approvals. Redeveloper agrees to secure all permits and licenses necessary for construction of the Private Improvements and its intended use of the Project Site including, but not limited to, necessary building permits and inspections.

B. Commencement and Completion Deadline for Private Improvements. The Redevelopers anticipate the commencement of the Private Improvements on or before September 1, 2015, but no later than September 1, 2016 and will substantially complete the same Private Improvements on or before August 30, 2016, but no later than September 30, 2017 (“Completion Date”).

**Section 203. Payment of Costs for Private Improvements.** Redeveloper agrees to use commercially reasonable efforts to complete construction of the Private Improvements as provided in this Redevelopment Agreement and to pay, or cause to be paid, in a timely manner all persons, firms, or organizations that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements in accordance with all the provisions of this Redevelopment Agreement relating to the obligations of Redeveloper to construct said improvements.

**Section 204. Redeveloper’s Certificate of Completion of Private Improvements.**

A. Promptly upon substantial completion by Redeveloper of the Private Improvements in accordance with all provisions of the this Redevelopment Agreement, and promptly after the Redeveloper provides the City with the proper documentation that Redeveloper’s contractor or his or her subcontractors who performed labor or supplied materials, equipment or supplies in the prosecution of the Private Improvements have been properly paid, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Private

Improvements. If the work has been completed in conformance with this Redevelopment Agreement, the City shall execute and deliver to Redeveloper the City's acceptance to the Redeveloper's Certificate of Completion of Private Improvements, the form of which is attached hereto as Exhibit "B". The acceptance of the Redeveloper's Certificate of Completion of Private Improvements by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Redevelopment Agreement with respect to the obligations of Redeveloper and its successors and assigns to construct the Private Improvements. As used herein, the term "completion" shall mean substantial completion of the required Private Improvements. Substantial completion is the stage in the construction progress of the Private Improvements when the Redeveloper has secured a temporary or permanent certificate of occupancy so that the Redeveloper can occupy or utilize the Private Improvements for their intended use.

B. The Redeveloper's Certificate of Completion of Private Improvements shall be recorded by Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska against the Project Site. If the City shall refuse or fail to execute the acceptance to a Redeveloper's Certificate of Completion of Private Improvements after a final inspection has been requested and performed, the City shall within fourteen (14) days provide Redeveloper with a written statement indicating in what particulars Redeveloper has failed to complete the Private Improvements in accordance with the provisions of this Redevelopment Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such acceptance.

**Section 205. Construction Administration.** Redeveloper shall be responsible for all components of the Private Improvements constructed by Redeveloper including construction

management, coordination of contractors and regulatory permitting and other requirements. Redeveloper and its contractor(s) shall reasonably cooperate with City contractors performing work in the vicinity of the Project Site including, but not limited to, Redeveloper's scheduling of its work to provide for a smooth sequence of operations. The Redeveloper will be solely responsible for payment of all construction costs for the Private Improvements

**Section 206. City Public Improvements.** The City, at its expense, subject to available TIF Tax Revenues and at its sole discretion will design and construct any or all of the City Public Improvements it deems necessary to support the Redevelopment Subproject provided that on or before the completion of the Private Improvements, the City will designate and provide signage for a bus zone on 8th Street and signage for a loading zone angle stall on “M” Street abutting the Project Site. Upon completion of the City Public Improvements, the City shall be responsible for maintaining the City Public Improvements, at its own cost and expense, and no responsibility thereof shall accrue to the Redeveloper, except for the work to be performed and the specific improvements to be made or maintained under a business improvement district.

**Section 207. City Sanitary Sewer Improvement.** Immediately after Redeveloper removes the hard surface from the north-south alley abutting the Project Site at the Redeveloper's expense, the City, at its expense, will design and construct a casing over the existing sanitary sewer line located underneath said alley, after which the Redeveloper will pave said alley, at the Redeveloper's expense.

### ARTICLE III.

#### SECURITY AND RESTRICTIONS

##### Section 301. Bond.

A. Payment and Performance Bond – Private Improvements. Prior to commencing construction of the Private Improvements, Redeveloper shall either:

- (1) submit proof to the City that Redeveloper's general contractor has furnished Redeveloper with a construction performance and construction payment bond in a sum not less than the contract sum for the Private Improvements. Such bonds shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to each person, as defined in Neb. Rev. Stat. §49-801, that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements, or
- (2) a payment bond supplied by Redeveloper's general contractor meeting the requirements of Neb. Rev. Stat. §52-141 (Reissue 2010) and a lien waiver from the general contractor. The penal amount of the bond shall be Two Million Five Hundred Thousand Dollars (\$2,500,000). As required by Neb. Rev. Stat. § 52-141, recorded notice of the bond must be filed of record against the Project Site. If this alternative is used, proof of said payment and recording shall be provided to the City prior to the start of construction of the Private Improvements. The lien waiver shall be provided upon completion of the Private Improvements.

B. Disbursement Agreement. The City shall accept in lieu of the requirement in Section 301.A above a fully executed Disbursement Agreement in the form attached hereto as

Exhibit “C” and a Redeveloper cash penal bond for the purposes set forth in Section 301.A to be held by the City in the amount of \$10,000. The form of the Penal Bond is attached hereto as Exhibit “D”.

C. Executive Work Order. Notwithstanding any provision to the contrary in Subsection A or B above, Redeveloper shall provide a separate guarantee for the executive order work described in Recital C above. Under the executive order construction process, there are four acceptable guarantees:

1. A surety bond which must be executed on the form attached to the executive order; or
2. A cash deposit with the City Treasurer. A certified check, payable to the City Treasurer is required. A description of the executive order construction typed on the check will help keep everyone’s records straight; or
3. An escrow account with a bank. The standard City of Lincoln escrow agreement form must be used; or
4. A letter of credit acceptable to the City Attorney’s Office.

**Section 302. Indemnification.** Redeveloper agrees to indemnify and hold the City harmless to the extent of any payments in connection with carrying out construction of the Private Improvements the City may be required to make for failure of Redeveloper or Redeveloper’s contractor to make payments of all amounts lawfully due to all persons supplying or furnishing Redeveloper’s contractor or his or her subcontractors with labor or materials performed or used in construction of Private Improvements.

**Section 303. Use Restrictions.** Redeveloper hereby represents and agrees that no portion of the Project Site shall be used, directly or indirectly, for the following uses:

- (a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except as shown on the Project Schematic Drawings and temporary signs advertising such lot is for sale or lease by the owner thereof;
- (b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption off the premises (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the licensed premises) or any such business that in the opinion of the City has an unreasonable pattern of liquor law violations;
- (c) any business for the sale of alcoholic beverages for consumption on the premises if such use, in the reasonable opinion of the City, has an unreasonable pattern of unlawful disturbances or alcoholic beverage law violations;
- (d) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);
- (e) any business operated or held out to the public as a sexually oriented business including live entertainment establishments as defined in Section 27.03.545 of the Lincoln Municipal Code and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented

show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service; The foregoing exclusion shall not include pay for view video/audio services, internet, and other forms of telecommunication/communication systems offered or available to Lincoln residents.

- (f) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;
- (g) any business involving gambling or wagering even if otherwise permitted by law including bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;
- (h) any business involving the sale or display of weapons, self-service Laundromats for non-residents or non-occupants of the Project Site, illegal activities, or the sale of any illegal goods or products; and
- (i) any business providing payday loans, liens, check cashing services, or other similar services except for banks, savings and loans, insurance companies, investment companies, stock brokers, credit unions, and automated teller machines.

**Section 304. Article III – Run with the Land.** Each of the use restrictions set forth in Section 303 shall apply only until the expiration of the Tax Increment Period, shall run with the

land, and shall bind every person having any fee or other interest in the Project Site, and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The use restrictions set forth in this Section shall automatically run with the Project Site upon the date that the Redeveloper acquires title to the Project Site pursuant to the Purchase Agreement. The City and Redeveloper shall record the permanent covenants against the Project Site with respect to the use restrictions set forth in this Section in the form attached as the Memorandum of Redevelopment Agreement as shown on Exhibit “E”.

## ARTICLE IV

### PARKING RIGHTS

**Section 401. Redeveloper’s Right to Lease During Construction.** During construction of the Private Improvements, the City shall grant or secure the first right of refusal for the Redeveloper, for the sole use of its contractors, subcontractors, employees and agents, to lease up to two hundred (200) surface parking stalls (Construction Parking) in a City surface parking lot or West Haymarket Joint Public Agency (“JPA”) owned surface parking lot which is operated and managed by the City on behalf of the JPA. The Construction Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, except for parking for Events (defined in Section 402.A below). The Redeveloper’s right to lease the Construction Parking shall be placed ahead of all other requests for parking except for those requests made pursuant to parking rights contained in an earlier Redevelopment Agreement. Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing parking permit to accommodate Redeveloper’s request for Construction Parking permits. The Construction Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to

other non-reserved monthly parkers in similarly situated surface parking lots. Except as herein stated, the rights granted hereunder shall be subject to regular and timely payment of the parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its contractors, subcontractors, employees and agents for use of said parking stalls a fee in excess of the rate paid by the Redeveloper and a reasonable administrative fee that may be charged by the Redeveloper to its Contractor to manage the parking rights.

**Section 402. Redeveloper's Right to Lease.** Shortly before substantial completion of the Private Improvements, the City shall grant or secure the right for the Redeveloper, for the sole use of its tenants, to lease the following parking in the West Haymarket Joint Public Agency ("JPA") owned Blue 3 Garage which is operated and managed by the City on behalf of the JPA:

A. Reserved Parking Stalls. Subject to Section 402 D below, the first right of refusal to lease up to fifty (50) fully reserved parking stalls ("Reserved Parking").

(1) The Reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, including all Nebraska home football games, Nebraska home (men's and women's) basketball games, Nebraska home baseball/softball games, Haymarket Park events, and Pinnacle Bank Arena events (collectively "Events"). The Reserved Parking shall be signed or otherwise designated as reserved parking within the Blue 3 Parking Garage and may be located in any parking stalls allocated for covered monthly parkers.

(2) The Reserved Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other residential monthly parkers in similarly situated garages. Except as herein stated, the rights granted hereunder shall be similar to the residential parking rights granted to residential monthly parkers in similar City garages and in

particular shall be subject to regular and timely payment of the parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its residential tenants for use of said parking stalls a fee in excess of the rate paid by the Redeveloper and a reasonable administrative fee that may be charged by the Redeveloper to its tenants to manage the parking rights.

B. Non-Reserved Parking Stalls. Subject to Section 402 D below, the first right of refusal to lease up to two hundred (200) parking stalls (“Non-reserved Parking”). The Non-reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year except for parking for Events. The Redeveloper’s right to lease the Non-reserved Parking shall be placed ahead of all other requests for parking except for those requests made pursuant to parking rights contained in an earlier Redevelopment Agreement. Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing parking permit to accommodate Redeveloper’s request for Non-reserved Parking permits. The Non-reserved Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other non-reserved monthly parkers in similarly situated garages. Except as herein stated, the rights granted hereunder shall be subject to regular and timely payment of the parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its residential tenants for use of said parking stalls a fee in excess of the rate paid by the Redeveloper and a reasonable administrative fee that may be charged by the Redeveloper to its tenants to manage the parking rights.

C. Event Parking. Notwithstanding subsection 402.B above, any or all of the Non-reserved Parking permits may include the right to park in the Blue 3 Parking Garage for Events

("Event Parking") at the Event Parking Rate defined below. The Event Parking will not be in assigned stalls. Rather, stalls will be occupied on a first come, first serve basis; provided that an eligible Non-reserved Parking parker with Event Parking rights who is already parked for their residential use, shall not be required to re-park for an Event.

(1) The City projects that the Blue 3 Parking Garage will be totally filled for University of Nebraska home football games, Nebraska home men's basketball games and the largest twenty (20) Arena Events per year (collectively "Events"). To be sure the City does not lose parking revenues for those Events, the Event Parking Rate will be the sum of (i) the twenty (20) largest Arena Events per year (subject to adjustment as provided below), times the City's published Blue 3 Parking Garage Event parking rate per Arena Event for the upcoming year and (ii) the City's published Blue 3 Parking Garage University of Nebraska Football Game and Basketball Game season parking rate for all games for the upcoming year. The pre-paid Events Parking will be paid to the City on a monthly basis amortized over a twelve (12) month period ("Event Parking Rate"). Each party reserves the right on the fifth anniversary of the Event Parking and every five years thereafter, to request an increase or decrease in the projected number of Arena Events in which the Blue 3 Parking Garage will be totally filled based upon the average number of per year Arena Events in which the Blue 3 Parking Garage was totally filled during the prior five (5) years and to increase or decrease the Event Parking Rate accordingly.

D. Maximum Parking Stalls. Notwithstanding any contrary provisions in Section 402 A and Section 402 B above, the maximum combined total number of Reserved Parking and Non Reserved Parking stalls shall not exceed two hundred (200) parking stalls at any one time.

**Section 403. Failure to Exercise Parking Rights.** If Redeveloper does not exercise any or all of the above rights to lease parking stalls in Section 402 on or before September 30, 2017, Redeveloper shall have the following continuing right to lease parking stalls:

If Reserved Parking, Non-reserved Parking, and Event Parking permits are not available when requested to meet any or all requests by Redeveloper, the City shall place any such unfilled request for permits on the applicable Reserved Parking, Non-reserved Parking, and Event Parking waiting list to be compiled by the City or its agent operating the Blue 3 Parking Garage (collectively “Waiting Lists”). Redeveloper’s request shall be placed on the applicable Waiting List ahead of all other requests, except for those requests to be placed on the Waiting List pursuant to parking rights contained in an earlier Redevelopment Agreement. Notwithstanding the above, Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing Reserved Parking, Non-reserved Parking and Event Parking permit to accommodate Redeveloper’s request for parking permits.

**Section 404. Relocation of Reserved, Non-reserved Parking, and Event Parking.** Redeveloper understands and acknowledges that the Blue 3 Garage is intended to be used primarily for parking associated with the development of other property currently owned by the JPA within the West Haymarket Area. Redeveloper understands and agrees that upon such development, the City may terminate, in whole or part, Redeveloper’s rights to use the Blue 3 Garage for Reserved Parking, Non-reserved Parking, and Event Parking; provided that, the City shall grant or secure the right for the Redeveloper to lease replacement parking (“Replacement Parking”) for the parking rights terminated in another parking garage or surface parking lot at a location reasonably acceptable to the City and Redeveloper. The Replacement Parking shall be

leased under parking permits issued by the City having the same terms and conditions as the Reserved Parking, Non-reserved Parking, and Event Parking being terminated.

**Section 405. Surface Parking Lot - RESERVED PARKING.** In lieu of the Redeveloper's above rights to use the Blue 3 Garage for Non-reserved Parking, with or without Event Parking rights, the City may grant or secure the first right of refusal for the Redeveloper to lease up to 200 surface parking stalls ("Surface Parking") in a City or JPA owned surface parking lot to be generally located west of Canopy Street, south of N Street, east of the Burlington Northern Santa Fe mainline tracks, and north of an east-west line connecting the intersection of M Street and 7<sup>th</sup> Street and the Burlington Northern Santa Fe mainline tracks. The Surface Parking shall be reserved for twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days per year, including Events. The Redeveloper's right to lease the Surface Parking shall be placed ahead of all other requests for parking except for those requests made pursuant to parking rights contained in an earlier Redevelopment Agreement. Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing parking permit to accommodate Redeveloper's request for Surface Parking permits. The Surface Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other non-reserved monthly parkers in similarly situated surface parking lots. Except as herein stated, the rights granted hereunder shall be subject to regular and timely payment of the parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its residential tenants for use of said parking stalls a fee in excess of the rate paid by the Redeveloper and a reasonable administrative fee that may be charged by the Redeveloper to its tenants to manage the parking rights.

**Section 406. Failure to Exercise Surface Parking Rights.** If Redeveloper does not exercise any or all of the above rights to lease surface parking stalls in Section 405 on or before September 30, 2017, or the date the Surface Parking is made available for Redeveloper's use, whichever is later. Redeveloper shall have the following continuing right to lease parking stalls: If Surface Parking permits are not available when requested to meet any or all requests by Redeveloper, the City shall place any such unfilled request for permits on the applicable Surface Parking waiting list to be compiled by the City or its agent operating the Surface Parking (collectively "Waiting Lists"). Redeveloper's request shall be placed on the Waiting List ahead of all other requests, except for those requests to be placed on the Waiting List pursuant to parking rights contained in an earlier Redevelopment Agreement. Notwithstanding the above, Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing Surface Parking permit to accommodate Redeveloper's request for Surface Parking permits.

**Section 407. Duration.** The parking rights outlined in Article IV shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements continue to be operated for primarily residential use or another land use acceptable to the City.

**Section 408. Termination of Parking Rights.** The City shall have the right to terminate any or all of the parking rights granted to Redeveloper in this Article IV in the event the Redeveloper fails to pay the ad valorem taxes on the Private Improvements.

## ARTICLE V.

### TAX AGREEMENT

**Section 501. Generation of TIF Tax Revenue.** The City intends to use the Tax Increment Provision to generate TIF Tax Revenues to be derived from the increased valuation of the Project Site, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Development Law which will be attributable to the construction of the Private Improvements under this Redevelopment Agreement.. TIF Tax Revenues, when collected, shall be used to pay for the City Public Improvements or to pay debt service on any TIF Indebtedness incurred by the City to fund said improvements. . Any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in the taxable valuation of the Project Site, shall be borne entirely by the City without any recourse of any kind against the Redeveloper.

**Section 502. Restriction on Transfer.** Redeveloper will not, for a period of fifteen (15) years after the issuance of the Redeveloper's Certificate of Completion of the Private Improvements by the City to the Redeveloper, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter ("Tax Increment Period"), convey the Project Site to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions or subsidiaries, unless such entity agrees in writing with the City to pay an annual fee in lieu of such annual tax increment equal to the amount of tax increment received by the City for the prior year of the conveyance for each of the remaining years of the Tax Increment Period.

**Section 503. Agreement to Pay Taxes.** Redeveloper agrees to pay all real property taxes levied upon the Project Site and Private Improvements prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of the Project Site and improvements for tax purposes.

**Section 504. Damage or Destruction of Redeveloper's Property.**

A. Construction Period. During the construction period, Redeveloper agrees to keep the construction area, including completed operations, insured against loss or damage by fire, and other such risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value but allowing for reasonable coinsurance clauses and deductibles.

B. Tax Increment Period. During the Tax Increment Period, Redeveloper agrees to keep the Project Site and the Private Improvements (during construction and after completed) insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value thereof based upon an estimate of insurable value (less footings and foundations) but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section may, at Redeveloper's option, be carried under an insurance policy or pursuant to a master policy of insurance or so called blanket policy of insurance covering other property owned by Redeveloper or its corporate affiliates, or any combination thereof.

**Section 505. Condemnation.** In the event that during the Tax Increment Period all or a substantial portion of the Project Site and Private Improvements is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest, would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the condemning authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period; provided that, nothing in this Section shall reduce or diminish the Redeveloper's claims, actions, awards or damages in a condemnation action.

**Section 506. Termination of Provisions.** The provisions of this Article V shall terminate upon the end of the Tax Increment Period.

## **ARTICLE VI**

### **MORTGAGE FINANCING; RIGHTS OF MORTGAGEES**

**Section 601. Limitation Upon Encumbrance of Property.** Prior to issuance of the Redeveloper's Certificate of Completion of Private Improvements by the City for the Private Improvements, neither Redeveloper nor any successors in interest to Redeveloper shall engage in any financing or any other transaction creating any mortgage or any other monetary encumbrance or monetary lien upon the Project Site and Private Improvements, whether by express agreement or operation of law, or suffer any monetary encumbrance or monetary lien to be made on or attached to such Project Site and Private Improvements, except for the purposes of obtaining funds only to the extent necessary to construct and develop the Redeveloper Improvements, and to finance, operate, maintain, repair, replace and insure said Redeveloper Improvements. All such mortgages, financial encumbrances, or monetary liens shall be subject

to the terms and conditions of this Redevelopment Agreement and shall be recorded in the appropriate public records in a timely manner following their execution.

Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to the Project Site and Redeveloper Improvements, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Site and Redeveloper Improvements whether by voluntary act of Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to the Project Site and Private Improvements and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the Clerk of the district court pursuant to Neb. Rev. Stat. § 52-142 to avoid or prevent foreclosure of such encumbrance or lien.

**Section 602. Mortgage Holder Obligations.** Each mortgage holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof shall not be obligated by and shall be exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Redeveloper Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than the holder of the mortgage; nor in favor of any person who subsequently obtains title to the Project Site or any part thereof from the holder of the mortgage; provided, however, no person, including the holder of a mortgage authorized by this Redevelopment Agreement, may devote the Private Improvements thereon or any part thereof to any use or

construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Redevelopment Agreement.

**Section 603. Copy of Notice of Default to Mortgage Holder.** Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Redevelopment Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the Register of Deeds of Lancaster County, Nebraska or as provided to the City by such mortgage holder.

**Section 604. Mortgage Holder's Option to Cure Defaults.** If thirty (30) days after notice or demand with respect to any breach of default as referred to in Section 603, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper's Certificate of Completion of Private Improvements) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand as referred to in Section 603, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default. In the event the Holder fails to cure, then the City shall have the remedies provided for in this Redevelopment Agreement.

**Section 605. Mortgage Rights Applicable to Other Forms of Encumbrance.** The rights and obligations of this Redevelopment Agreement relating to mortgages of the Project Site prior to issuance of the Redeveloper's Certificate of Completion of Private Improvements for the

Private Improvements thereon shall apply to any other type of encumbrance on the Project Site, and any of the stated rights, obligations, and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance, all of which shall be as duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

**Section 606. Termination of Provisions.** The provisions of this Article VI shall terminate upon issuance of the Redeveloper's Certificate of Completion of Private Improvements for all the Private Improvements by the City to the Redeveloper.

## **ARTICLE VII.**

### **REPRESENTATIONS**

**Section 701. Development of Project.** Redeveloper represents and agrees that its undertakings, pursuant to this Redevelopment Agreement, have been, are, and will be, for the purpose of redevelopment of the Project Site and not for speculation in land holding.

**Section 702. Restrictions on Assignments of Rights or Obligations.** Redeveloper represents and agrees that prior to issuance of the Redeveloper's Certificate of Completion of Private Improvements by the City, there shall be no sale or transfer of Redeveloper or assignment of its rights or obligations under this Redevelopment Agreement to any party without the prior written approval of the City Administration, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. The City shall be entitled to require, except as otherwise provided in this Redevelopment Agreement, as conditions to any such approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Redevelopment Agreement by Redeveloper;

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds of Lancaster County, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of Redeveloper under this Redevelopment Agreement and agreed to be subject to all of the conditions and restrictions to which Redeveloper is subject. No transfer of, or change with respect to ownership in Redeveloper's interest in the Project Site or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Redevelopment Agreement with respect to the Project Site and the construction of the Private Improvements that would have occurred, had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to Redeveloper in writing; and

D. Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Proposal for Redevelopment; provided that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the

Redeveloper of any of its obligations with respect to the construction of the Private Improvements.

E. Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become effective after the City has issued a Redeveloper's Certificate of Completion of Private Improvements. The restrictions set forth in this Section 702 shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper's Certificate of Completion of Private Improvements by the City.

**Section 703. Change in Scope, Termination of Project.** In the event that Redeveloper is unable through no fault of Redeveloper to obtain the necessary governmental approvals and permits from the City to construct the Private Improvements, Redeveloper may terminate this Redevelopment Agreement by delivering written notice to the City.

## **ARTICLE VIII.**

### **REMEDIES**

**Section 801. In General.** Except as otherwise provided in this Redevelopment Agreement, in the event of any default in or breach of this Redevelopment Agreement, or any of its terms or conditions by the City or the Redeveloper, or any successors to such parties, such party (or successor) shall, upon written notice from the aggrieved party, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such thirty (30) day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the

aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

**Section 802. Other Rights and Remedies; No Waiver by Delay.** The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Redevelopment Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Redevelopment Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

**Section 803. Delay in Performance For Causes Beyond Control of Party (“Force Majeure”).** For the purpose of any provisions of this Redevelopment Agreement, the parties or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this Section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay.

**Section 804. Rights and Remedies Cumulative.** The rights and remedies of the parties to this Redevelopment Agreement, whether provided by law or by this Redevelopment Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of a party conferred by this Redevelopment Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

## **ARTICLE IX.**

### **MISCELLANEOUS**

**Section 901. Conflicts of Interest; City Representatives Not Individually Liable.** No official or employee of the City shall be personally liable to the Redeveloper, any successors in interest or transferees of the Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Redevelopment Agreement.

**Section 902. Persons Authorized to Issue Approvals.** For purposes of this Redevelopment Agreement and the approvals and disapprovals required hereunder, Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, or the Mayor, or the Director of the Department of Urban Development or its successor as authorized in this Redevelopment Agreement, as constituting the approval or disapproval required by the City. Until City receives further written notice from Redeveloper, City shall be entitled to rely on the written approval of Loren P. King as constituting the approval or disapproval of Redeveloper.

**Section 903. Equal Employment Opportunity.** Redeveloper, for itself and its successors and transferees, agrees that during the construction and operation of the Private Improvements provided for in this Redevelopment Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Redeveloper because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**Section 904. Notices and Demands.** A notice, demand, or other communication under this Redevelopment Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

If to the City: Mayor  
555 South 10th Street  
Lincoln, Nebraska 68508

With a copy to: City Attorney  
555 South 10th Street  
Lincoln, Nebraska 68508

If to Redeveloper: Loren P. King  
NE-UNL Holdings LLC  
201 Main Street  
Suite 1000  
Lafayette, IN 47901

With a copy to: Kent Seacrest  
Seacrest & Kalkowski, PC, LLO  
1111 Lincoln Mall, Suite 350  
Lincoln, Nebraska 68508

or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

**Section 905. Approval Not Unreasonably Withheld and Timely Approval.**

Whenever approval, determination, requirement or consent of either party is required hereunder, such action shall not be unreasonably withheld, conditioned or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Redevelopment Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the requesting party as to whether all necessary information has been received. If any party to this Redevelopment Agreement submits any item to another party to this Redevelopment Agreement for approval pursuant to this Redevelopment Agreement, and the party so requested to approve fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

**Section 906. Access to Project Site.** Redeveloper shall permit the representatives of the City to enter Project Site at any and all reasonable times, as the City may deem necessary for the purposes of this Redevelopment Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Private Improvements. Similarly, the City shall permit Redeveloper such entry upon the public rights of way for such purposes. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided for in this Section. The City's right of access granted

under this Section shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion of Private Improvements. Notwithstanding the above, Redeveloper shall not be relieved of the provisions contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

**Section 907. Provisions Run With the Land.** This Redevelopment Agreement shall run with the Project Site and shall inure to and bind the parties and their successors in interest.

**Section 908. No Discrimination.** The Redeveloper shall not discriminate against any employee or applicant for employment to be employed in the performance of this Section pursuant to the requirements of state law and 8 USC 1324b. The Redeveloper shall require any contractor constructing the Private Improvements on behalf of Redeveloper to comply with the provisions of this Section.

**Section 909. Titles of Articles and Sections.** Any titles of the several parts, articles and sections of this Redevelopment Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 910. Mutual Cooperation.** The parties agree to mutually cooperate in constructing the various improvements each is to construct in the Lincoln Center Redevelopment Area so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time

**Section 911. Integrated Contract; Severance of Provisions; Interpretation; Governing Law.** It is intended by the parties that this Redevelopment Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially

change the intent of this Redevelopment Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Redevelopment Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally. The Redeveloper's responsibilities, liabilities and duties under this Agreement are stated herein and the Exhibits and no other unwritten Redeveloper responsibilities, liabilities or duties shall be implied or assumed. This Redevelopment Agreement shall be construed and governed by the laws of the State of Nebraska.

**Section 912. Definitions.**

A. For the purpose of this Redevelopment Agreement, the term "holder" in reference to a mortgage shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the mortgagee.

B. The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

C. The term "minimum investment" shall include all costs incurred by Redeveloper when constructing the Private Improvements, including but not limited to design and engineering costs, construction costs, fees, financing costs, and land and improvement costs.

**Section 913. Effective Date of Ad Valorem Tax Provision.** The Effective Date of the Ad Valorem Tax Provision of the Redevelopment Subproject shall, at the option of the City, be the date of Project Site acquisition, date of commencement of the Private Improvements, or the date of substantial completion of the Private Improvements. The Redeveloper understands that the City will deliver written notice to the County Assessor on or before August 1 of the year of the Effective Date to divide the property taxes in the Project Area and use the last certified

valuation to divide the taxes for the remaining portion of the fifteen-year period as described in Section 18-2147(3) of the Nebraska Revised Statutes.

**Section 914. Expiration.** Except as otherwise provided herein, this Redevelopment Agreement shall expire upon the expiration of the Tax Increment Period.

**Section 915. Recording.** A Memorandum of this Redevelopment Agreement (in the form attached hereto as Exhibit “E”) shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Project Site, at the Redeveloper’s expense.

**Section 916. Representations and Warranties of Parties.**

A. Redeveloper represents and warrants to City as follows:

i. **Organization; Power; Good Standing.** Redeveloper is a Delaware limited liability company, duly organized and validly existing in good standing under the laws of Delaware and authorized to do business in Nebraska. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Redevelopment Agreement and perform the obligations hereunder.

ii. **Authority Relative to Agreement.** This Redevelopment Agreement has been duly executed and delivered by Redeveloper and constitutes a legal, valid and binding obligation of Redeveloper, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

iii. **Effect of Agreement.** The execution, delivery and performance of this Redevelopment Agreement by Redeveloper has been duly authorized by all necessary action by

Redeveloper and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Redeveloper, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which Redeveloper is a party.

B. City represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Redevelopment Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

ii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by City has been duly authorized by all necessary action by the City and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to the City, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which the City is a party.

**Section 917. Counterparts.** This Redevelopment Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

**Section 918. Successors and Assigns.** The provisions of this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns; provided,

however, that the obligations of Redeveloper pursuant to this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

**Section 919. Purpose of Agreement.** This Redevelopment Agreement has been entered into by the City to provide financing for the Redevelopment Subproject, an approved redevelopment project as defined in Neb. Rev. Stat. § 18-2103(12) within the Lincoln Center Redevelopment Plan.

**Section 920. Authority.** The Mayor is hereby authorized to take such action as the Mayor may deem necessary or advisable in order to carry out this Agreement, including, but not limited to, the authority to make ministerial alterations, changes or additions to this Agreement and the Exhibits.

**Section 921. Redeveloper Contingencies.** The Redeveloper's performance of this Agreement is contingent upon the following:

A. On or before the earlier of (i) three (3) months after the Redeveloper's acquisition of the Project Site or (ii) September 1, 2016 , or mutual extension thereof, the Redeveloper qualifying, securing and closing on the loan financing of the Private Improvements, with terms and conditions acceptable to the Redeveloper;

B. On or before September 1, 2017, or mutual extension thereof, the Redeveloper obtaining the necessary approvals from the applicable governmental entities having jurisdiction of the design and construction of the Private Improvements.

In the event the contingencies set forth in this paragraph are not satisfied or waived by the Redeveloper by the contingency deadlines described above, then the Redeveloper shall have the

option to terminate this Agreement, including the executed Exhibits hereto, by delivering written notice to the City on or before September 1, 2017.

**Section 922. Estoppel Certificate.** Promptly, but in no event later than ten (10) City of Lincoln business days following written request by either party (“Requesting Party”), the other party (“Requested Party”) shall execute, acknowledge and deliver to the Requesting Party a written certificate certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification); (b) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Requested Party; (c) that Requesting Party is not in default under the Agreement nor does any event exist which, with the passage of time or the giving of notice or both would constitute an event of default (except as to defaults specified in the certificate); and (d) such other matters as may be reasonably requested by the Requesting Party. Any such certificate may be relied upon by any prospective purchaser, mortgagee or beneficiary under any mortgage affecting the Project Site.

**Section 923. Exhibits.** The following Exhibits are attached to this Redevelopment Agreement and are incorporated herein by this reference:

Exhibit “A” – Subproject Area

Exhibit “B” – Certificate of Completion of Private Improvements

Exhibit “C” – Disbursement Agreement

Exhibit “D” – Penal Bond

Exhibit “E” – Memorandum of Redevelopment Agreement and Use Restrictions.

Executed by City this \_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF LINCOLN, NEBRASKA,**  
a municipal corporation

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by CHRIS BEUTLER, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

Executed by Redeveloper this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**NE-UNL Holdings LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Loren P. King, Authorized Representative  
of NE-UNL Holdings LLC

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Loren P. King, Authorized Representative of **NE-UNL Holdings LLC**, a Delaware limited liability company, on behalf of the limited liability company.

(SEAL)

\_\_\_\_\_  
Notary Public

Exhibit "A" -- Subproject Area



Exhibit A: Collegiate Housing Redevelopment Subproject

 Collegiate Housing Redevelopment Subproject Area

City of Lincoln: Urban Development



Exhibit "B"

Return to:  
Seacrest & Kalkowski Law Firm  
1111 Lincoln Mall, Suite 350  
Lincoln, Nebraska 68508

**CERTIFICATE OF COMPLETION OF  
PRIVATE IMPROVEMENTS**

KNOW ALL PEOPLE BY THESE PRESENTS: That the City of Lincoln, Nebraska, a Nebraska municipal corporation, hereinafter called "**City**," hereby makes the conclusive determination and certification that, with regard to Lots 13 – 15 and 1/2 of the adjacent vacated alley, Block 70, Original Plat, City of Lincoln, Lancaster County, Nebraska ("**Project Site**"), all the improvements required to be constructed upon the above-described Project Site have been satisfactorily completed in accordance with the requirements of the CITY OF LINCOLN REDEVELOPMENT AGREEMENT ("**Agreement**") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("**City**") and NE-UNL Holdings LLC, a Delaware limited liability company, authorized to transact business in the State of Nebraska, and its successors and assigns (collectively "**Redeveloper**"). A Memorandum of Agreement of said Agreement is dated as of \_\_\_\_\_, 2015, and recorded as Instrument No. \_\_\_\_\_, in the office of the Register of Deeds for Lancaster County, Nebraska.

The City further makes the conclusive determination that the Private Improvements (as defined in the Agreement) to the above-described Project Site are presently in conformance with the Agreement.

IN WITNESS WHEREOF, the City and Redeveloper have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**“City”**

**CITY OF LINCOLN, NEBRASKA,**  
a municipal corporation

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

\_\_\_\_\_  
Notary Public

**“Redeveloper”**

NE-UNL Holdings LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Loren P. King, Authorized Representative  
of NE-UNL Holdings LLC

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Loren P. King, Authorized Representative of **NE-UNL Holdings LLC**, a Delaware limited liability company, on behalf of the limited liability company.

(SEAL)

\_\_\_\_\_  
Notary Public

Exhibit "C"

**DISBURSEMENT AGREEMENT**

This Agreement is entered into between the City of Lincoln, Nebraska, a municipal corporation (City) and NE-UNL Holdings LLC, a Delaware limited liability company, authorized to transact business in the State of Nebraska, and its successors and assigns (collectively Redeveloper).

City and Redeveloper have entered into a CITY OF LINCOLN, NEBRASKA REDEVELOPMENT AGREEMENT (Collegiate Housing Project) for the Collegiate Housing Redevelopment Subproject (Project). The Redevelopment Agreement provides for City support for the Project through the construction of City Public Improvements, funded by tax increment revenue generated by the Ad Valorem Tax Provision in accordance with the terms of the Redevelopment Agreement and the Nebraska Community Development Law.

The Redevelopment Agreement requires the Redeveloper to construct certain Private Improvements and to provide evidence of a performance and payment bond from the Redeveloper.

In consideration of the foregoing recitals which are made a part of this Agreement and the mutual covenants of this Agreement, the parties agree:

1. Terms, definitions. Capitalized terms used in this Agreement shall have the same definitions as contained in the Redevelopment Agreement, unless specifically defined otherwise.
2. Guarantee of Performance and Payment. Redeveloper guarantees payment of all amounts lawfully due to each person, as defined in Neb. Rev. Stat. §49-801 that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements.
3. Disbursements. Redeveloper shall, prior to commencement of the Private Improvements, provide evidence satisfactory to the City that the construction financing or title insurance for the Private Improvements provides for disbursements for reimbursement of construction costs only upon demonstration that the work has been completed in accordance with the approved plans pursuant to the Redevelopment Agreement and that all persons having performed labor or furnished materials, equipment or supplies for such work have been paid and given lien waivers in exchange for payment.
4. City Discretion. The parties acknowledge that this Agreement is entered into in lieu of City requiring a performance and payment bond by the Redeveloper or the Redeveloper's contractor on the Project. City's decision as to whether a category of improvement has been completed satisfactorily shall be final up to completion of all Private Improvements.

Dated: \_\_\_\_\_, 201\_\_.

REDEVELOPER:

NE-UNL Holdings LLC, a Delaware limited  
liability company

By: \_\_\_\_\_  
Loren P. King, Authorized Representative  
of NE-UNL Holdings LLC

CITY OF LINCOLN, NEBRASKA,  
a municipal corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit "D"

Bond No. \_\_\_\_\_

**PENAL BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we, NE-UNL Holdings LLC, a Delaware limited liability company, authorized to transact business in the State of Nebraska, and its successors and assigns, collectively as **Principal**, and \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ and authorized to transact business in the State of Nebraska, as **Surety**, are held and firmly bound unto the **City of Lincoln, Nebraska**, as **Obligee**, for the use of all persons entitled thereto, under Neb. Rev. Stat. § 18-2151, in the penal sum of **Ten Thousand and 00/100ths Dollars (\$10,000.00)**, lawful money of the United States of America and to the faithful payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators (or, assigns), firmly by this presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That,

WHEREAS, Principal and Obligee have entered into a CITY OF LINCOLN, NEBRASKA REDEVELOPMENT AGREEMENT (Collegiate Housing Project), dated \_\_\_\_\_, 2015 (an original of which is on file in the Office of the City Clerk of the City of Lincoln, Nebraska) which provided in part for the building and construction of Redeveloper Private Improvements as defined in said Redevelopment Agreement, upon condition that Principal at all times promptly make payment of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials used in the prosecution of said Improvements provided for in the Redevelopment Agreement.

NOW, THEREFORE, if Principal shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials in the prosecution of the Redeveloper Private Improvements as require the execution of this Penal Bond, then this obligation shall become void, otherwise to remain in full force and effect. In the event Principal shall be declared by the Obligee to be in default under the above obligation, Surety shall promptly indemnify and save harmless the Obligee to the extent any payment in connection with the carrying out of the prosecution of the Redeveloper Private Improvements provided for in the Redevelopment Agreement which Obligee may be required to make under the law, provided that the aggregate liability of Surety of any default(s) hereunder by the Principal shall in no event exceed the penal sum of this Bond.

All persons who have supplied or furnished the Principal, its contractors and/or subcontractors with labor or materials in the prosecution of the Redeveloper Public Improvements provided for in the Redevelopment Agreement shall have the direct right of action under this bond subject to the Obligee's priority.

**[SIGNATURE PAGE FOLLOWS]**

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“Principal”

NE-UNL Holdings LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Loren P. King, Authorized Representative of  
NE-UNL Holdings LLC

STATE OF NEBRASKA       )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Loren P. King, Authorized Representative of **NE-UNL Holdings LLC**, a Delaware limited liability company, on behalf of the limited liability company.

(SEAL)

\_\_\_\_\_  
Notary Public

“Surety”

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEBRASKA       )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

Exhibit "E"

Memorandum

Return the original to:  
City Attorney's Office  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

**MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS**

THIS MEMORANDUM OF COLLEGIATE HOUSING REDEVELOPMENT AGREEMENT & USE RESTRICTIONS ("**Memorandum**") is made and entered into as of the date of execution hereof by the last signatory hereto as indicated below ("**Effective Date**") by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska and its successors and assigns ("**City**") and NE-UNL HOLDINGS LLC, a Delaware limited liability company, authorized to transact business in the State of Nebraska, and its successors and assigns (hereinafter referred to collectively as "**Redeveloper**").

1. **Redevelopment Agreement.** The City and Redeveloper entered into that certain Redevelopment Agreement dated as of this even date, describing the Private Improvements being made to real property to be acquired by the Redeveloper in the City of Lincoln, Nebraska, more particularly described as Lots 13-15 and 1/2 of the adjacent vacated alley, Block 70, Original Plat, City of Lincoln, Lancaster County, Nebraska ("**Project Site**").

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the City generated by construction of the Private Improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the Redevelopment Project effective date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used for to make the City Public Improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

4. **Development and Use Restrictions.** Redeveloper agrees that during the Tax Increment Period no portion of the Project Site shall be used for any of the following uses and practices:

- (a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except as shown on the Project Schematic Drawings and temporary signs advertising such lot is for sale or lease by the owner thereof;
- (b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption off the premises (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the licensed premises) or any such business that in the opinion of the City has an unreasonable pattern of liquor law violations;
- (c) any business for the sale of alcoholic beverages for consumption on the premises if such use, in the reasonable opinion of the City, has an unreasonable pattern of unlawful disturbances or alcoholic beverage law violations;
- (d) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);
- (e) any business operated or held out to the public as a sexually oriented business including live entertainment establishments as defined in Section 27.03.545 of the Lincoln Municipal Code and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service; The foregoing exclusion shall not include pay for view video/audio services,

internet, and other forms of telecommunication/communication systems offered or available to Lincoln residents;

- (f) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;
- (g) any business involving gambling or wagering even if otherwise permitted by law including bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;
- (h) any business involving the sale or display of weapons, self-service Laundromats for non-residents or non-occupants of the Project Site, illegal activities, or the sale of any illegal goods or products; and
- (i) any business providing payday loans, liens, check cashing services, or other similar services except for banks, savings and loans, insurance companies, investment companies, stock brokers, credit unions, and automated teller machines.

5. **Parking Rights.** The City has granted the Redeveloper certain parking rights as described in Article IV of the Redevelopment Agreement and such parking rights shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements as defined in the Redevelopment Agreement continue to be operated for residential use or another land use acceptable to the City.

6. **Inquiries.** Further inquiries regarding this Memorandum may be made to the following parties:

If to the City:

Mayor  
555 South 10th Street  
Lincoln, Nebraska 68508

With a copy to:

City Attorney  
555 South 10th Street  
Lincoln, Nebraska 68508

If to Redeveloper:           Loren P. King  
  NE-UNL Holdings LLC  
  201 Main Street  
  Suite 1000  
  Lafayette, IN 47901

With a copy to:           Kent Seacrest  
  Seacrest & Kalkowski, PC, LLO  
  1111 Lincoln Mall, Suite 350  
  Lincoln, Nebraska 68508

or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in this Section.

[SIGNATURE PAGES TO FOLLOW]

Executed by City this \_\_\_\_\_ day of \_\_\_\_\_, 2015

“City”

**CITY OF LINCOLN, NEBRASKA,**  
a municipal corporation

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by CHRIS BEUTLER, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

Executed by Redeveloper this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

“Redeveloper”

NE-UNL Holdings LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Loren P. King, Authorized Representative  
of NE-UNL Holdings LLC

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Loren P. King, Authorized Representative of **NE-UNL Holdings LLC**, a Delaware limited liability company, on behalf of the limited liability company.

(SEAL)

\_\_\_\_\_  
Notary Public